Supreme Court, U.S.
FILED
MAR 29 2002
CLERK

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No. 01-1258

IN THE SUPREME COURT OF THE UNITED STATES

RONALD GULLA and EVELYN GULLA,

Petitioners,

v.

NORTH STRABANE TOWNSHIP; NORMA WINTERMYER, individually and in her capacity as North Strabane Township Supervisor; ALAN A. AXELSON, M.D.; LINDENCREEK ASSOCIATES; T.A. WARD CONSTRUCTORS; and ADVANCED BUILDING DEVELOPMENT,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

John B. Cromer, Esquire

Counsel for Respondents, North Strabane Township and Norma Wintermyer, in her capacity as North Strabane Township Supervisor

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I. COUNTER-STATEMENT OF THE CASE

On June 28, 1996, a Complaint alleging a civil rights action pursuant to 42 U.S.C. § 1983, was filed. The Complaint alleged that North Strabane Township and Township Supervisor, Norma Wintermyer, violated the Plaintiffs' civil rights by approving a Subdivision Plan in which the developers subsequently interfered with Plaintiffs' easement rights in a spring located on the subdivided property. The Complaint was initially dismissed on April 24, 1997 based on the Rooker-Feldman doctrine. Under this doctrine, a court cannot consider constitutional claims which have been adjudicated in a state court or are inextricably intertwined with a state court adjudication. An appeal was taken to the Third Circuit, which reversed the dismissal in Gulla v. North Strabane Township, 146 F.3d 168 (3d Cir. 1998). On remand, the District Court granted Motions to Dismiss from the private Defendants on the basis that the Complaint failed to demonstrate their actions were under color of state law. Then, by Order dated May 12, 2000, the lower court granted summary judgment to the municipal Defendants on the basis that the Township's approval of the Subdivision Plan did not deprive the Gullas of property, and thus, its actions had no due process implications. A timely appeal was taken to the Third Circuit, which ultimately affirmed the trial court's Order holding that there was no causal connection between procedural defects or substantive due process allegations in connection with the subdivision approval process and any impairment of Evelyn Gulla's water rights. A re-hearing was requested but denied on June 20, 2001. Now, Petitioners seek this Court's review of the judgment of the United States Court of Appeals for the Third Circuit.

II. COUNTER-STATEMENT OF FACTS

On or about April 23, 1993, Lindencreek Associates submitted an application to the Planning Commission of North Strabane Township for subdivision approval. Petition, App. A at 23a. Preliminary approval was granted in May, 1993. Petition, App. A at 15a. Physical destruction of the spring occurred at or near that time when initial development testing took place. Id. Allegedly inadequate repairs were made rendering the water undrinkable and a second interruption of water flow occurred in April, 1994. Id. Thereafter, on June 28, 1994, North Strabane Township voted its final approval of the subdivision application. Subsequently, in July, 1994, contractors, after giving the Gullas notice of further interference with the spring water right-of-way, interfered with the Gullas' easement.

While the Gullas' Statement of Facts provides a laundry list of claimed malicious acts aimed at the Gulla family, Petition at 5, none of them are pertinent nor relevant to the within Petition for Writ of Certiorari nor relevant to these responding parties.[1]

III. ARGUMENTS AND REASONS FOR DENYING THE WRIT

First, Petitioners' question presented for review is not subject to review. Petitioners would have this Court grant certiorari because, according to the Petitioners, the subdivision approval was voted on without notice to the Plaintiffs and subsequent construction of the subdivision resulted in destruction of the Petitioners' easement. Petition at i.

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[1] Suffice it to say that the Gullas' Statement of Facts are not undisputed facts.

A careful review of the lower court's opinion, as well as that of the Third Circuit, establishes that neither the trial court nor the Third Circuit based its rulings on the issue for which the Petitioners seek review. The lower court wrote that:

> We set aside the issue of whether there was a "public hearing" within the meaning of 53 P.S. § 10508(5) before the Supervisors voted on the Plan, thereby eliminating any requirement of notice. We note parenthetically that it is permissible, not mandatory, that a hearing be held prior to the approval of a land development plan. Eastern Consol. & Distrib. Services, Inc. v. Bd. of Comm'rs of Hampden Tp., 701 A.2d 621, 624 (Pa.Commw. 1997).

Petition, App. A at 25a-26a. Additionally, the Third Circuit writes that the Plaintiffs' procedural and substantive due process claims fail for lack of evidence of causation. Petition, App. A at 17a and 19a.

Again, the Petitioners have not sought review of an issue which is before this Court.

Second, I wish to correct some perceived misstatements of fact and law as set forth in the Petitioners' Brief. First, the subdivision approval did not indicate the Plaintiff's easement, and thus, Plaintiff's statement that we approved a plan whereby a roadway was permitted to be constructed over top of her spring and water easement, is a spin on the actual facts.

Petition at 11. Easements are not required to be recorded on subdivision plans and state law enforcement of private rights may be secured through a contract or tort action against the person abrogating the easement. As the Third Circuit correctly notes, the Gullas are pursuing state law claims in state court. Petition, App. A. at 16a and 17a.

Further, the Petitioners argue that the Court apparently viewed the public procedure regarding the subdivision approval process to constitute such a public hearing. 53 P.S. § 10508. Petition at 7. That is just not the case. As previously stated, the Court set aside that issue for another day.

Petitioners cite to two cases, DeBlasio v. Zoning Board of Adjustment, 53 F.3d 592 (3d Cir. 1995), and Harris v. County of Riverside, 904 F.2d 497 (9th Cir. 1990). Neither of these cases support Petitioners' position requesting this Honorable Court to review the Third Circuit's decision.

Finally, Petitioners have failed to satisfy any of the criteria warranting a grant of the Petition under Rule 10 of this Court's Rules of Practice. The Third Circuit decision is not in conflict with another United States Court of Appeals, nor does the decision involve important federal questions to be settled by this Court. All in all, as the Third Circuit wrote, "Protection of these private rights may be secured through a contract or tort action against the person abrogating the easement." Petition, App. A at 16a.

IV. CONCLUSION

The Respondents, North Strabane Township and Norma Wintermyer, in her capacity as North Strabane Township Supervisor, respectfully request this Honorable Court deny the Petition for Writ of Certiorari for the reasons stated foregoing.

Respectfully submitted,

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